

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

EUGENE WHITEHEAD,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

) Case No. SUSP-02-0010

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on March 12, 2003. GERALD L. MORGEN, Vice Chair, reviewed the file and record and participated in the decision in this matter.

1.2 **Appearances.** Appellant Eugene Whitehead was present and was represented by Joaquin Hernandez, Attorney at Law, of Parr and Younglove. Janetta Sheehan, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a two-week suspension without pay for neglect of duty, insubordination, gross misconduct, and willful violation of published employing agency or Department of Personnel rules or regulations. Respondent alleges

1 that Appellant was argumentative, agitated, interruptive, and used an elevated tone of voice during a  
2 telephone conference call.

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4 1.4 **Citations Discussed.** WAC 358-30-170; . McCurdy v. Dep't of Social & Health Services,  
5 PAB No. D86-119 (1987); Countryman v. Dep't of Social & Health Services, PAB No. D94-025  
6 (1995); Harper v. WSU, PAB No. RULE-00-0040 (2002); Skaalheim v. Dep't of Social & Health  
7 Services, PAB No. D93-053 (1994).

## 8 9 **II. FINDINGS OF FACT**

10 2.1 Appellant was a Psychiatric Social Worker 3 and permanent employee of Respondent  
11 Department of Social and Health Services at the Frances Haddon Morgan Center. Appellant and  
12 Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder,  
13 Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on  
14 March 21, 2002.

15  
16 2.2 Appellant began his employment with the Frances Haddon Morgan Center in April 1990.  
17 Appellant became a shop steward sometime during 1992 or 1993.

18  
19 2.3 By letter dated March 14, 2002, Timothy Brown, Assistant Secretary of Health and  
20 Rehabilitative Services Administration, informed Appellant that he was suspended without pay for  
21 a period of two weeks effective March 18, 2002 through March 31, 2002. Mr. Brown charged  
22 Appellant with neglect of duty, insubordination, gross misconduct and willful violation of published  
23 employing agency policies.

24  
25 2.4 Mr. Brown alleged that on March 27, 2001, Appellant was argumentative, agitated,  
26 interruptive, and used an elevated tone of voice ranging from talking loud to yelling at Carol Kirk,

1 Frances Haddon Morgan Center Superintendent, and Davis Garabato, Human Resource Manager, in  
2 spite of numerous requests by Ms. Kirk for Appellant to calm down. Mr. Brown also alleged that  
3 Appellant angrily yelled at Ms. Kirk and said, "I'm going to get you for this!" Ms. Kirk perceived  
4 his comment as a threat. The incident described in Mr. Brown's letter occurred during a telephone  
5 conference call where Appellant participated as a shop steward for a personnel matter.

6  
7 2.5 Appellant has received no prior formal discipline, however, his performance evaluations  
8 from 1990 through 2000 consistently refer to his difficulties in dealing with supervisors and co-  
9 workers in a professional manner. The evaluations addressed Appellant's unacceptable  
10 communication style, his emotional or defense reactions, confrontational manner, and his tendency  
11 to accuse others of harassment.

12  
13 2.6 On numerous occasions, Appellant's supervisor Girgis Hafzalla, Professional Services  
14 Manager, communicated to Appellant clear expectations that his communication style "remain  
15 highly professional at all times" and that he expected him to "follow office policy and meet  
16 standard performance expectations on the job."

17  
18 2.7 In December 2000, Appellant received a letter of reprimand for his failure to properly  
19 maintain a respite calendar. In January 2001, Appellant received another letter of reprimand for his  
20 failure to communicate information to his supervisor and management staff about a client transfer.

21  
22 2.8 On March 27, 2001 at approximately 8:30 a.m., Appellant, Ms. Kirk, Mr. Garabato, Audrey  
23 Santangelo, Safety Officer, and Amy Achilles, a Frances Haddon Morgan employee, participated in  
24 a telephone conference call to discuss the recent home assignment of Ms. Achilles. Appellant  
25 participated as the shop steward and advocate for Ms. Achilles.

1 2.9 Jamie Stevens, Developmental Disability Administrator 2, intended to participate in the  
2 meeting. However, she arrived late to the meeting, so she could only testify with regard to the last  
3 portion of the conference call.

4  
5 2.10 Based on a preponderance of the credible testimony presented, we find that the following  
6 events occurred during the meeting:

7  
8 2.11 Ms. Kirk began the conference call by attempting to explain to Ms. Achilles the reason for  
9 her home assignment. Appellant interjected by saying that Ms. Achilles was not being treated fairly.  
10 Ms. Achilles stated in an upset and frustrated manner that she felt she was “under house arrest.”  
11 Each time Appellant spoke, his voice increased in volume. In an angry and escalated voice,  
12 Appellant repeated that Ms. Achilles was not being treated fairly. Ms. Kirk warned Appellant that  
13 she would terminate the call if he did not calm down. Appellant began to make reference to Mr.  
14 Garabato and Ms. Kirk previously hanging up on him. The focus of the conversation then shifted  
15 from Ms. Achilles to Appellant. Appellant’s anger continued to escalate, and he stated, “You can’t  
16 treat me like that.” Further, Appellant accused Ms. Kirk of being unprofessional, rude, and  
17 retaliatory. Ms. Kirk repeatedly asked Appellant to calm down. Appellant informed Ms. Kirk that  
18 he did not have to calm down because he was the shop steward. After Appellant continued to  
19 angrily interrupt and yell, he said to Ms. Kirk, “I’m going to get you for this.” Ms. Kirk terminated  
20 the conference call.

21  
22 2.12 The conference call participants were talking at the same time, so there is a dispute about  
23 what was actually said during the conference call. Appellant denies that he said to Ms. Kirk, “I’m  
24 going to get you.” However, Mr. Garabato and Ms. Kirk corroborated that he made the statement.

1 2.13 Ms. Kirk interpreted Appellant's statement as a threat, and the following day she reported it  
2 to her supervisor, Anita Delight, Acting Regional Administrator. By letter dated March 29, 2001,  
3 Ms. Delight assigned Appellant to his home effective March 30, 2001 during an investigation into  
4 the allegations of his misconduct.

5  
6 2.14 The Frances Haddon Morgan Center Policy #203, which Appellant acknowledged that he  
7 read and understood by his May 16, 2000 signature, directs employees to serve as role models for  
8 personal behavior and maintain standards of conduct that promote faith, trust, and confidence. The  
9 policy also requires employees to treat each other with dignity and respect, maintain personal  
10 conduct with accepted standards of behavior, and use appropriate language and tone of voice. It  
11 further states that foul and abusive language toward employees will not be tolerated and may result  
12 in corrective action.

13  
14 2.15 On August 29, 2001, Mr. Brown conducted a fact finding hearing with Appellant, Ms.  
15 Olson, and Sue Thomas, Human Resource Manager. During the meeting, Appellant indicated that  
16 he felt his behavior during the conference call was appropriate. Appellant claimed he was fulfilling  
17 his function as a shop steward and doing what was necessary to act on behalf of his client.

18  
19 2.16 In addition to Appellant's responses during the fact finding hearing, Mr. Brown reviewed  
20 the fact finding investigation report to determine whether Appellant's behavior constituted  
21 misconduct. Mr. Brown was not convinced by Appellant's response that his actions were justified  
22 because he was acting as a shop steward and advocating for his client.

23  
24 2.17 Although Mr. Brown acknowledged that Ms. Kirk perceived Appellant's comment "I'm  
25 going to get you" as a threat, he did not conclude it was a threat of injury. Rather, Mr. Brown  
26 decided to look at the situation as a whole.

1  
2 2.18 Mr. Brown was concerned about Appellant's repeated anger and confrontational behavior at  
3 the meeting, and on numerous prior occasions. Even though Appellant had been given many  
4 opportunities to correct his behavior, his behavior had not changed.

5  
6 2.19 Mr. Brown concluded that Appellant willfully violated Frances Haddon Morgan Policy  
7 #203. Mr. Brown also concluded that Appellant neglected his duty to reinforce socially responsible  
8 behavior, and he failed to maintain personal conduct within accepted standards of behavior by not  
9 treating the other conference call participants with dignity, respect, concern, and courtesy. Mr.  
10 Brown determined that Appellant's unacceptable behavior constituted gross misconduct because his  
11 actions undermined the orderly operations of Frances Haddon Morgan Center.

12  
13 2.20 Mr. Brown examined Appellant's performance evaluations and letters of reprimand, and  
14 then he consulted with Appellant's supervisor. Since Mr. Brown considered Appellant's behavior  
15 to be serious and unacceptable, he determined that substantial disciplinary action was necessary.  
16 Mr. Brown concluded that the maximum length of suspension, two weeks, was the appropriate  
17 discipline to change Appellant's behavior and prevent a recurrence.

### 18 19 **III. ARGUMENTS OF THE PARTIES**

20  
21 3.1 Respondent argues that Appellant's behavior during the conference call was completely  
22 inappropriate both as an employee and as a shop steward. Respondent states that Appellant has a  
23 duty to advocate for employees as a shop steward in a reasonable and controlled manner.  
24 Respondent asserts that Appellant's role as a shop steward does not give him the right to act in a  
25 disrespectful and threatening manner toward management. Further, Respondent argues that  
26 Appellant transitioned out of his role as a shop steward and into the role of the employee by turning

1 the conversation to a discussion about his own issues. Respondent states that Appellant has had  
2 prior incidents of becoming angry and yelling at his supervisors and co-workers. Respondent  
3 asserts that Appellant clearly violated Frances Haddon Morgan Center Policy #203 by not  
4 maintaining standards of conduct that promote faith, trust, and confidence. Respondent asserts that  
5 Appellant does not recognize that his behavior was inappropriate, and the two-week suspension was  
6 more than justified to deter recurrence of similar behavior.

7  
8 3.2 Appellant argues that both sides were frustrated during the conference call. Appellant  
9 asserts that management and classified staff often do not “see eye to eye” and arguments are  
10 expected during labor disputes. Appellant asserts that he did not threaten anyone. Appellant asserts  
11 that if Ms. Kirk had felt he threatened her, she would have taken action immediately. Appellant  
12 states that Ms. Kirk, however, did not report the threat until the end of the following day. Appellant  
13 contends that he and Ms. Kirk have a history of conflicts, and Ms. Kirk has a motivation to “get rid  
14 of him.” Appellant argues that Ms. Kirk disrespectfully told him to “be quiet” rather than to “calm  
15 down” during the conference call. Appellant asserts that he did not conduct himself in a rude and  
16 unprofessional manner during the meeting. Appellant argues that a two-week suspension was not  
17 warranted and is too severe, and therefore asks the Board to reverse that sanction.

#### 18 19 **IV. CONCLUSIONS OF LAW**

20  
21 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter.

22  
23 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
24 the charges upon which the action was initiated by proving by a preponderance of the credible  
25 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
26

1 sanction was appropriate under the facts and circumstances. WAC 358-30-170; [WAC 251-12-  
2 240(1)]; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

3  
4 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
5 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
6 of Social & Health Services, PAB No. D86-119 (1987).

7  
8 4.4 Insubordination is the refusal to comply with a lawful order or directive given by a superior  
9 and is defined as not submitting to authority, willful disrespect, or disobedience. Countryman v.  
10 Dep't of Social & Health Services, PAB No. D94-025 (1995).

11  
12 4.5 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
13 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
14 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
15 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

16  
17 4.6 Willful violation of published employing agency or institution or Personnel Resources  
18 Board rules or regulations is established by facts showing the existence and publication of the rules  
19 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
20 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

21  
22 4.7 Although it is not appropriate to initiate discipline based on prior formal and informal  
23 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
24 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
25 D93-163 (1995).



1 4.8 We recognize that Appellant was functioning in his capacity as a shop steward, however, his  
2 behavior was inappropriate and unprofessional. Respondent has met its burden of proving that  
3 Appellant willfully violated the Frances Haddon Morgan Policy #203 when he became agitated,  
4 angry, and interruptive, and then yelled during the conference call. Appellant's statement to Ms.  
5 Kirk, "I'm going to get you," was unprofessional and unacceptable. Furthermore, Appellant's  
6 overall behavior was unprofessional and inappropriate and he clearly failed to treat others with  
7 respect and dignity.

8  
9 4.9 Respondent has also met its burden of proving that Appellant was insubordinate and  
10 willfully disrespectful when he yelled at Ms. Kirk and Mr. Garabato during the conference call.  
11 Ms. Kirk repeatedly directed Appellant to "calm down," and Appellant refused to comply with a  
12 directive given by a superior. Further, Appellant's performance evaluations over a number of years  
13 consistently addressed his inappropriate behavior of reacting emotionally and being confrontational.

14  
15 4.10 Respondent has failed to meet its burden of proof that Appellant's behavior constituted  
16 neglect of duty or gross misconduct. Appellant was functioning as a shop steward at the time,  
17 therefore, we find that his behavior does not constitute neglect of duty. Further, Respondent failed  
18 to establish that Appellant's behavior adversely impacted the agency's ability to carry out its  
19 functions.

20  
21 4.11 In determining whether a sanction imposed is appropriate, consideration must be given to  
22 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
23 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
24 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
25 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

1 4.12 Based on Respondent's failure to prove that Appellant's actions constituted neglect of duty  
2 or gross misconduct, we conclude that a two-week suspension is too severe. We further conclude  
3 that a one-week suspension without pay is sufficient to impress upon Appellant the importance of  
4 modifying his behavior.

5  
6 4.13 Therefore, the disciplinary sanction of a two-week suspension should be modified to a one-  
7 week suspension.

8  
9 **V. ORDER**

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Eugene Whitehead is granted  
11 in part and is modified to a one-week suspension.

12  
13 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

14  
15 WASHINGTON STATE PERSONNEL APPEALS BOARD

16  
17 \_\_\_\_\_  
18 Walter T. Hubbard, Chair

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21 Gerald L. Morgen, Vice Chair